properly addressed. Dato' Seenivasagam concedes that this has not been done.

We therefore uphold Mr. Marjoribanks' preliminary objection that this appeal has not been properly brought before the court and disallow Dato' Seenivasagam's application to proceed with this appeal. The appeal is accordingly struck off, the respondents' taxed costs to be paid by the appellant.

Appeal struck off.

Solicitors: *S. Seenivasagam & Sons; Lovelace & Hastings.*

ATTORNEY-GENERAL, SINGAPORE v. LING HOW DOONG

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) January 23, 1969]

[Singapore — Federal Court Civil Appeal No. Y.42 of 1968]

Constitutional Law — Police Force — Disciplinary action — Public Service Commission — Enhancing of sentence on appeal — Police Force Ordinance, 1958, s. 28(2) — Constitution of Malaysia, art., 135(2) and Independence of Singapore Act, 1965.

This was an appeal against the judgment of Winslow J. who made a declaration that the order of dismissal of the respondent by the Public Service Commission was null and void ([1968] 2 M.L.J. 253). The respondent had originally been charged with four charges of breaches of discipline under the Police Force Ordinance and after an inquiry by a disciplinary board he was found guilty on two of the four charges and the Commissioner of Police imposed a fine of $50 on the first charge and reprimanded him on the second charge. The respondent thereupon appealed against the decision of the commissioner and subsequently he was informed that the Public Service Commission had decided after hearing the appeal that he should be dismissed from the service. The respondent commenced an action claiming a declaration and damages. As a result Winslow J. made the declaration above mentioned. The questions which were raised on the appeal were: (1) whether the Public Service Commission, in ordering the dismissal of the respondent, was acting in exercise of its original jurisdiction conferred on it by the Constitution of Malaysia or in exercise of its appellate jurisdiction conferred on it by section 28(2) of the Police Force Ordinance; (2) if the Public Service Commission was acting in exercise of its appellate jurisdiction, whether it had power, in an appeal by the respondent, against his conviction and sentence to enhance the punishment awarded by the Commissioner of Police; (3) if the Public Service Commission was acting in the exercise of its original jurisdiction, whether the respondent had been dismissed without being given a reasonable opportunity of being heard.

Held, dismissing the appeal: (1) it was beyond doubt that the Public Service Commission in ordering the dismissal of the respondent in this case was acting in the exercise of its appellate jurisdiction under section 28(2) of the Police Force Ordinance;

(2) the Public Service Commission had no power to enhance the punishment and therefore in dismissing the respondent it was acting without jurisdiction.

Semble: if in this case the Public Service Commission could be said to be exercising its original jurisdiction, then on the facts the respondent had not been given a reasonable opportunity to be heard on the question of his dismissal.

Case referred to:—

(1) *B. Surinder Singh Kanda* v. *The Government of the Federation of Malaya* [1962] M.L.J. 169.

FEDERAL COURT.

Ho Thian Cheh (Ag. Senior State Counsel) for the appellant.

J.B. Jeyaretnam for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The respondent Ling How Doong was an inspector in the Singapore Police Force. On the 23rd February 1966 a letter of dismissal was addressed to him by the Commissioner of Police in the following terms:—

"23rd February, 1966.

Inspector Ling How Doong,
Police Training School.
Through: A.C. 'Training & Personnel'.

(Sd.)
Assistant Commissioner,
'Training & Personnel'

Commandant, Police Training School.

I have to refer to your letter of 5-11-65 forwarding your grounds of appeal against the finding and punishment imposed by the Commissioner of Police.

2. Your appeal has been submitted for the consideration of the Public Service Commission. The Public Service Commission after consideration of your appeal has decided that you should be dismissed from the service.

3. This letter then is to serve as a notice to you of your dismissal from the service. Your dismissal from the service will take effect from the day immediately following that on which you receive this notice. Your last day of service will therefore be the day you receive this notice.

4. Please acknowledge receipt of this letter on the attached duplicate copy thereof.

(Sd. J. Le Cain)
Commissioner of Police,
Singapore."

The facts and circumstances which resulted in Inspector Ling's dismissal from the Singapore Police Force by the Public Service Commission were as follows:—

On 14th June 1965 four charges under section 27 of the Police Force Ordinance were preferred against Inspector Ling. In accordance with regulation 8 of the Police Regulations, 1959 which were made under the Police Force Ordinance, 1958 (No. 32 of 1958) a board consisting of two officers senior in rank to Inspector Ling was duly appointed to conduct a disciplinary enquiry into these four charges. One charge alleged that Inspector Ling was guilty of the offence of conduct to the prejudice of good order and discipline, another charge alleged that he was guilty of the offence of neglect of orders

and the remaining two charges alleged that he was guilty of the offence of excess of duty resulting in injury to two persons.

These offences were punishable under section 28(1) by dismissal or retirement from the Police Force, or by any of the following punishments:—

(i) reduction in seniority;

(ii) deferment or stoppage of increment;

(iii) reprimand;

(iv) caution,

and in lieu of or in addition to any other punishment by a fine not exceeding two hundred dollars.

In due course the board conducted a disciplinary enquiry in accordance with the procedure laid down in the said Police Regulations, 1959. During the course of the enquiry two of the four charges were amended by the board and after the conclusion of the enquiry the board on 8th September 1965 found Inspector Ling guilty on the two amended charges (i) of the offence of excess of duty resulting in injury to two persons and (ii) of the offence of neglect of orders.

The board recommended the punishment of a reprimand and a fine of $100 for the offence of excess of duty and the punishment of a reprimand for the offence of neglect of orders. The Commissioner of Police, on receipt of the findings and recommendations of the board accepted the board's findings and imposed a fine of $50 in respect of the offence of excess of duty and a reprimand in respect of the offence of neglect of orders. The Commissioner of Police's award was communicated to Inspector Ling by a letter dated 14th September 1965.

On 2nd October 1965 Inspector Ling by a letter addressed to the Commissioner of Police gave notice of appeal against the conviction and the sentences. Section 28(2) of the Police Force Ordinance, 1958 provides for a right of appeal against any finding or sentence, other than an order of dismissal or retirement from the police force.

On 4th November 1965 Inspector Ling submitted, with an accompanying letter, his grounds of appeal addressed to the Head of State. As Inspector Ling was on that date attached to the Police Training School, his letter to the Head of State and the accompanying grounds of appeal were handed to the Commandant of the Police Training School, in accordance with proper administrative procedure, for transmission. The commandant however returned Inspector Ling's letter with an endorsement as follows:—

"Inspt. Ling How Doong,

Please address the appeal to the Commissioner of Police as he had at no time forwarded the record of the enquiry and his recommendations thereto to H.E. the Negara. The C. of P. can decide on your appeal.

(Sd.)
Commdt. P.T.S.
5/11/65."

Accordingly, on 5th November 1965, Inspector Ling sent his grounds of appeal to the Commissioner of Police with the following accompanying letter:—

"Commissioner of Police,
Police Headquarters,
Singapore.
Through: Proper channel.

Sir,

I have the honour to forward herewith my grounds of appeal against my conviction on two departmental charges for your perusal and decision.

I have the honour to be,
Sir,
Your obedient servant,
(Sd. Ling How Doong)."

Inspector Ling's letter and his grounds of appeal were, in accordance with proper administrative procedure, transmitted by the Assistant Commissioner "Training and Personnel" to the Commissioner of Police with an accompanying memorandum which was in the following terms:—

"*CP thru DC* A.T.R. 11-XI-65.

Pl. see encl. (17A), a petition against conviction on 2 disciplinary charges.

2. This will have to go before the PSC since the Appointing Authority is, at the same time, the appealing authority. (Sec. 28(2) of the Police Force Ordinance has relevance).

(Sd. Illegible)
Assistant Commissioner,
'Training & Personnel' "

It can therefore be presumed that the Commissioner of Police sent Inspector Ling's appeal to the Public Service Commission for its consideration and that the Commissioner of Police having subsequently been informed of the decision of the Public Service Commission then sent to Inspector Ling the letter of dismissal of 23rd February 1966.

Inspector Ling then brought an action in the High Court of Singapore challenging his dismissal. Winslow J. made a declaration that the order of dismissal by the Public Service Commission was null and void and made an order that Inspector Ling be entitled to half the taxed costs of the action. The Attorney-General of Singapore who was the named defendant in the action now appeals to this court.

Several questions arise for consideration in this appeal. The first question is whether the Public Service Commission, in ordering the dismissal of Inspector Ling, was acting in exercise of its original jurisdiction conferred on it by the Constitution of Malaysia read with the Independence of Singapore Act, 1965 or in exer-

cise of its appellate jurisdiction conferred on it by section 28(2) of the Police Force Ordinance, 1958. The second question is, if the Public Service Commission was acting in exercise of its appellate jurisdiction, whether it had power, in an appeal by Inspector Ling against his conviction and sentence, to enhance the punishment already awarded by the Commissioner of Police. The third question is, if the Public Service Commission was acting in the exercise of its original jurisdiction, whether Inspector Ling had been dismissed without being given a reasonable opportunity of being heard, a constitutional right accorded by article 135(2) of the Constitution of Malaysia read with the Independence of Singapore Act, 1965.

We now deal with the first question. It is not in issue before us that, as the law now stands and at the material time, the appellate authority under section 28(2) of the Police Force Ordinance, 1958 is the Public Service Commission. It seems to us clear beyond doubt, on the facts and documents we have earlier set out, and in particular the letter dated 23rd February 1966, that the Public Service Commission in ordering Inspector Ling's dismissal was acting in the exercise of its appellate jurisdiction under the said section 28(2).

On the second question, the proceedings against Inspector Ling were instituted and conducted and the appeal by Inspector Ling was made under the Police Force Ordinance, 1958, and the Police Regulations 1959 made thereunder. Nowhere in that Ordinance or those Regulations is there any provision which empowers any authority exercising appellate jurisdiction under that Ordinance to enhance any punishment awarded by a competent subordinate authority under that Ordinance. Nor is there any provision in that Ordinance or those Regulations conferring any power of revision on any authority where there has been no appeal against an award of punishment. It follows, in our opinion, that the Public Service Commission on the facts and circumstances of this matter, in dismissing Inspector Ling on an appeal to it by Inspector Ling was acting without jurisdiction.

It seems unnecessary therefore to answer the third question but we would nevertheless do so. It is common ground that the Public Service Commission is the authority to dismiss Inspector Ling under the Constitution. It is also common ground that, if no steps had been taken under the Police Force Ordinance, 1958 and the Police Regulations, 1959 against Inspector Ling, the Public Service Commission had power to dismiss him provided article 135(2) had not been infringed. Article 135(2) protects, among others, members of the police force from being dismissed or reduced in rank without being given a reasonable opportunity of being heard. It is argued that if the Public Service Commission's dismissal of Inspector Ling had been under its original jurisdiction conferred on it by the Constitution, Inspector Ling cannot be said to have been so dismissed without being given a reasonable opportunity of being heard. He had in fact, so it is argued, by virtue of the proceedings before the disciplinary board, been given every opportunity to defend himself and had in fact availed himself of that opportunity.

We are unable to accept this argument. The right to be heard is, as the Privy Council has said in *B. Surinder Singh Kanda* v. *The Government of the Federation of Malaya*,[1] an essential characteristic of what is called natural justice and is the expression of the concept of fairness. Admittedly, in the present case the Public Service Commission had acted in reliance on the disciplinary board's findings and on all the evidence placed before that board. But it had failed, in our opinion, in one fundamental respect to observe the test of fairness. Inspector Ling could not know and could not reasonably be expected to know that the Public Service Commission was considering, not his guilt or innocence on the charges which the board had found proved against him, not whether his punishment of a fine and reprimand by the Commissioner of Police was excessive in the circumstances, but whether or not to dismiss him on the proved charges.

In our opinion, on the facts and circumstances of this case, he had a right to know his dismissal was under consideration by the Public Service Commission and therefore a right to be heard on the question of his dismissal. He ought to have been given the right to defend himself on the question of dismissal because he did not know and could not reasonably be expected to know that the Public Service Commission was considering the matter *de novo* and not as an appeal by him against his conviction and sentence. If he had been given the right to be heard on dismissal he might well defend himself by urging that it was not fair or it was *ultra vires* the Public Service Commission to put him in double jeopardy i.e. that he had already been punished once and should or could not be punished again on the same facts. In the result, the appeal is dismissed with costs.

The respondent has cross-appealed against the trial judge's order that he be entitled to half the taxed costs of the action. Costs are in the sole discretion of the trial judge and we see no reason, having regard to the issues raised before him and his findings on those issues, to vary his order as to costs. The cross-appeal is also dismissed with costs.

Appeal and cross-appeal dismissed.

Solicitors: *J.B. Jeyaretnam & Co.*